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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	76470648
Applicant	Genitope Corporation
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of: Genitope Corporation
Serial Number: 76/470,648
Filing Date: November 29, 2002
Mark: **[fingerprint man design]**
Law Office: 115
Examining Attorney: Yard, John S.

APPEAL BRIEF

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

This brief is in furtherance of the Notice of Appeal submitted May 23, 2005. Applicant respectfully appeals from the Examining Attorney's Final Office Action of November 22, 2004. The present appeal involves a single issue: whether the substitute specimen filed September 3, 2004 is acceptable as evidence of actual trademark use. Each of the grounds of the Examining Attorney's refusal is addressed below.

I. The Specimen Provides Evidence of Actual Trademark Use

The Examining Attorney has refused registration on the basis that, "while the new specimen does show use in commerce and in connection with the goods, the specimen is unacceptable as evidence of actual trademark use because it is in the nature of advertising or promotional material." Final Office Action dated November 22, 2004, at 2. Applicant respectfully disagrees, and submits that the specimen clearly qualifies as a display associated with the goods, and thus provides sufficient evidence of actual trademark use.

The submitted specimen consists of an Internet-based display featuring the mark as used in connection with the goods. In *In re Dell, Inc.*, the Board held that a website page can qualify as a display associated with the goods as long as the mark appears on the web page in a manner that associates the mark with the goods. 71 U.S.P.Q.2d 1725 (T.T.A.B. 2004). The Examining Attorney concedes that "the new specimen does show use in commerce and in connection with the goods," and acknowledges that Applicant's goods are of a "customized nature." Final Office Action at 2. Applicant's mark is used in connection with individualized cancer treatments prepared specifically for each individual patient from whom tumor tissue has been received. Because of this, Applicant's goods are not packaged and displayed in a traditional manner, nor do they travel in traditional channels of trade. Moreover, because Applicant makes highly

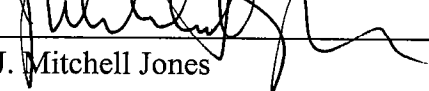
specialized, custom-manufactured pharmaceutical preparations based on tissue samples received from individual patients, rather than mass-produced goods for the general public, the goods are not amenable to the type of point-of-sale displays that allow direct ordering of the goods by the general public. Indeed, the typical purchasers of Applicant's goods are physicians or health care providers, rather than the patients themselves. Finally, Applicant submits that the Examining Attorney has provided no evidence that the specimen does not qualify as a display associated with the goods. For the reasons stated above, and because the fact that the specimen shows use of the mark in commerce and in connection with the goods is undisputed, Applicant respectfully submits that the specimen qualifies as a display associated with the goods, and thus provides sufficient evidence of actual trademark use.

CONCLUSION

For the foregoing reasons, Applicant respectfully submits that the specimen clearly qualifies as a display associated with the goods, and thus provides sufficient evidence of actual trademark use. Applicant requests either that the Board render a decision as to the registrability of the mark, or that the application be remanded for reconsideration by the Examining Attorney.

Respectfully submitted,
MEDLEN & CARROLL, LLP
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Dated: 7-22-05

By: 
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